

APPEAL NO. 032641  
FILED NOVEMBER 10, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on September 8, 2003. The hearing officer determined that the respondent (claimant) sustained a compensable (back) injury on \_\_\_\_\_; that the appellant (carrier) waived the right to contest compensability by not timely contesting the injury; and that the claimant had disability from \_\_\_\_\_, through the date of the CCH.

The carrier appealed, asserting that the claimant had preexisting back problems; that the claimant was pregnant during a portion of the time at issue; and that the carrier had timely contested compensability. The claimant filed a response, urging affirmance.

DECISION

Affirmed.

The claimant, a sales associate, testified how she injured her back lifting a tote bag out of a box on \_\_\_\_\_. Although the claimant conceded that she had had a sore back previously, she testified that the pain she experienced on \_\_\_\_\_, was more severe. The claimant sought treatment with a chiropractor the same day giving a history of "unloading freight from totes." The chiropractor took the claimant off work and referred her to an orthopedic surgeon, who ordered MRIs (which revealed no abnormalities), and diagnosed cervical and lumbar strains. The claimant was released to light duty with sitting, standing, walking, and lifting restrictions. The claimant delivered her child on March 25, 2003, with some complications. The claimant testified that she continues to have problems with her thoracic and lumbar spine and has been unable to obtain and retain employment at her preinjury wage.

In evidence is a Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) dated October 1, 2002, stamped as having been hand delivered to the Texas Workers' Compensation Commission (Commission) on October 2, 2002. The TWCC-21 recites first written notice was received by the carrier on September 23, 2003. Although the carrier's adjuster testified that an electronic "Downs 21" had been filed with the Commission on September 26, 2002, there was no documentation of the filing or an acknowledgment by the Commission for such a filing in evidence. The hearing officer did not err in determining that the carrier waived its right to contest compensability pursuant to Sections 409.021 and 409.022.

While the carrier cites some evidence to support its position on the disputed issues of injury and disability, the hearing officer's determinations are supported by the evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). The 1989 Act provides that the hearing officer is the sole judge of the weight

and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. We would also note that a claimant's testimony alone, if believed, may establish that an injury occurred and disability had resulted from it. Houston Independent School District v. Harrison, 744 S.W.2d 298, 299 (Tex. App.-Houston [1st Dist.] 1987, no writ).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM  
350 NORTH ST. PAUL STREET  
DALLAS, TEXAS 75201.**

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Chris Cowan  
Appeals Judge

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Gary L. Kilgore  
Appeals Judge